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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/750,475
Filing Date: December 28, 2000
Appellant(s): NGUYEN, LYNH

Ebenesar D. Thomas, Reg. No. 62,499
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/2/2012 appealing from the Office action mailed 12/28/2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 6-8, 13-15, 18-22, and 24 stand finally rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6950848	*Yousefi'zadeh*	9/27/2005
6134588	*Guenthner* et al	10/17/2000
6549516	*Albert* et al	4/15/2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

I. CLAIM REJECTIONS - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

A. Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yousefi'zadeh*, U.S. Patent No. 6950848 in view of *Guenthner* et al, U.S Patent No. 5.134.588 ["*Guenthner*"], in further view of *Albert* et al., U.S. Patent No. 6549516 ["*Albert*"].

Claims 1, 8, and 15

Yousefi'zadeh as modified by *Guenthner* and *Albert* discloses a method, apparatus and program product (hereinafter a "system") comprising:

providing at least one interface module [*Yousefi'zadeh*, Fig. 3 «item 28»] to interface with a remote application [*Yousefi'zadeh*, Fig. 3 «item 34»];

providing port module to interface between interface module and data source [*Yousefi'zadeh*, Fig. 3 «item 32»: the LB module connecting the web control module to the database];

providing a connection manager to facilitate between the interface module and port module [*Yousefi'zadeh*, Fig. 3 «item 18»];

detecting unavailability of the data source, by the at least one port module, in response to an initial request for the data source by the remote application [*Yousefi'zadeh*, column 5 «lines 6-21»: disclosing "the LB module 32 monitors the state of the respective database servers" | column 12 «lines 24-31»: where the LB module detects when a server becomes unavailable];

dynamically detecting availability of the data source, by the at least one port module, in response to a subsequent request for the data source [*Yousefi'zadeh*, column 5 «lines 6-21»: disclosing the module monitors the state of the respective database servers & *Guenthner*, column 9 «lines 16-35»: disclosing detecting whether a server has become available]; and

reconnecting the data source to the remote application in response to the subsequent request [*Guenthner*, column 9 «lines 16-35»],

wherein the at least one port module sends an error message to the interface module indicating the unavailability of the data source [*Guenthner*, Fig. 6 «item 112»], reestablishes a connection with the data source, and reconnects the remote application to the data source [*Guenthner*, column 9 «lines 16-35»] directly communicating with the remote application [*Albert*, Fig. 2a «items 201, 231»: the forwarding agent (i.e., port module) directly communicating with the client (i.e., remote application)], and

wherein the at least one port module bypasses the connection manager in the subsequent request [*Albert*, column 13 «lines 4-8»: disclosing the "future" (i.e., subsequent) packets are handled directly by the forwarding agent and bypasses the service manager (i.e., connection manager)].

Yousefi'zadeh does not explicitly disclose:

(1) dynamically detecting availability of the data source, reestablishes a connection with the data source, and reconnecting the data source to the remote application in response to the subsequent request;

(2) wherein the at least one port module sends an error message to the interface module indicating the unavailability of the data sources; and

(3) directly communicating with the remote application and bypassing the connection manager. However, these features were well known in the art at the time of Applicant's invention as evidenced by *Guenthner* and *Albert*

1. *Guenthner* discloses the steps of detecting the availability of a data source in response to a subsequent request and reconnecting to the data source when it becomes available.

While *Yousefi'zadeh* discloses monitoring the status of the database (i.e., data source), *Yousefi'zadeh* is silent as to detecting the availability of the data source in a subsequent request. In a similar field of invention, *Guenthner* discloses detecting unavailability of a data source in response to a request for the data source [column 9 «lines 18-20»], dynamically detecting availability of the data source and reconnecting to the data source in response to a subsequent request [column 9 «lines 16-35»].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have modified *Yousefi'zadeh*'s port module to include the techniques described above in *Guenthner*. One would have been motivated to provide such a combination to enhance a client's experience by ensuring availability of data sources [*Guenthner*, column 1 «lines 65-67»]. These features improve upon *Yousefi'zadeh*'s system by enabling a port module to reconnect to a database that had previously failed but is available again.

2. *Guenthner* discloses wherein the at least one port module sends an error message to the interface module indicating the unavailability of the data sources.

Guenthner discloses the sending an error message to the interface module indicating the unavailability of the data source [*Guenthner*, Fig. 6 «item 112»] but does not expressly disclose a port module that returns the error message. However, because error messages that indicate the unavailability of data sources were well known in the art, implementing the error message functionality at a device that sits between the client and the data source (e.g., *Yousefi'zadeh*'s port module) would have been obvious to one of ordinary skill in the art because there are only a limited number of devices from which the error message could be sent. *See* MPEP § 2143 (obvious to try because there are only a finite number of identified solutions - the error message could be sent from the data source or the port module).

3. The combination of *Yousefi'zadeh* and *Albert* discloses a port module that reconnects a remote application the data source by directly communicating with the remote application and bypassing the connection manager.

As noted in the foregoing mapping, *Albert* discloses a service manager (i.e., connection manager) that helps establish an initial connection between a client and a forwarding agent (i.e., port module because it interfaces with a data source). Subsequent requests are handled directly between the client and the forwarding agent (i.e., bypassing the service manager).

It would have been obvious to one of ordinary skill in the art to have modified *Yousefi'zadeh*'s port module to include the bypassing feature described above in *Albert*. Such a modification to *Yousefi'zadeh*'s system is an example of using a known technique (*Albert*'s teaching of bypassing the service manager for future requests) to improve similar systems in the same way. *See* MPEP § 2143. The modification would result in future requests bypassing *Yousefi'zadeh*'s

web server (which is akin to the claimed connection manager and *Albert*'s service manager as all three are responsible for connecting the client to the port module).

Claims 6, 7, 13, 14, 18, 19, and 24

Yousefi'zadeh as modified independent of the nameserver (i.e., the name server does not need to be initialized in order by *Guenthner* and *Albert* discloses re-establishing a connection between the port module and the data source independently from initialization of the connection manager, i.e., without re-initializing the connection manager [see *Guenthner*, Figure 8 | column 9 «lines 32-35» : reconnecting to reconnect the client to the server)].

(10) Response to Argument

A. *Albert*'s disclosure of "future" packets within a data flow that are directed to a data source and bypassing a service manager read on Appellant's claimed "subsequent requests."

Albert discloses that "future" (i.e., subsequent) packets are handled directly by the forwarding agent and bypasses the service manager (i.e., connection manager) [column 13 «lines 4-8»]. Appellant argues that this disclosure does not read on the limitation of bypassing the connection in a subsequent request. Specifically, Appellant argues that *Albert* teaches that packets within a data flow bypass the service manager but that these packets are not analogous to Appellant's claimed "subsequent request."

The phrase "subsequent request" is broad and may be subject to a variety of interpretations. Here, it is reasonable to interpret each of *Albert*'s subsequent packets within a data flow as a "subsequent request." There is no language in the claim that prohibits interpreting "request" as a "packet."

Appellant argues that "packets" are not subsequent requests for the data source. However, *Albert* discloses that the future packets within the flow are directed to the destination IP address of the data source [column 13 «lines 22-24»]. Because the future packets are directed to the data source, it is reasonable to interpret the packets as being requests for the data source.

B. *Guenthner* discloses sending an error message to an interface module indicating the unavailability of the data source.

Guenthner discloses a client machine that comprises a browser application [Fig. 1]. The client machine is analogous to Appellant's claimed browser application because it "interfaces" with the browser. The browser application is analogous to Appellant's claimed remote application.

Guenthner discloses returning an error message to the client machine [Fig. 6 «item 112» | column 6 «lines 38-40»: disclosing providing an error indication to the user. It would have been obvious that the user is located at the client machine; therefore, the error indication is provided to the client machine]. The error is provided to the user when there are no data sources available based on a determination from a list of servers [column 5 «lines 57-60» & column 7 «lines 46-52»].

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

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